IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9208 OF 2005

Smt. Geeta B. Soni .. ..Petitioner

Versus

Shri Harish Shabulal Hariani .. ..Respondent

Mr.P.S.Dani for petitioner

Smt.Suhasini Mutalik for respondent

CORAM : P.V.KAKADE, J.

DATE : 17TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The Petitioner-tenant has impugned the order dated 29.10.2005 dismissing his appeal and confirming the judgment and order passed by the trial court dated 24.4.2002 decreeing the respondent-plaintiff’s suit for

vacant and peaceful possession of the suit property under the provisions of the Bombay Rent Act.

3. The respondent-plaintiff is the landlord and owner of the property bearing No.13F, situated at Chakala Street, Cross Lane, Mandvi, Bombay 400 003 and defendant was a statutory tenant in respect of room no..8 on the first floor of the said property. It was the case of the plaintiff that the suit premises was let out to the defendant on the terms and conditions as per agreement dated 23.4.1986. As per the agreement the defendant was supposed to pay the rent and permitted increases regularly on monthly basis. It was further agreed that the defendant shall not effect any additions and alterations in the suit premises without the previous consent in writing of the landlord but violating the clause 4 of the agreement the defendant had constructed a loft of permanent nature without consent of the plaintiff. The defendant had agreed not to change the user of the suit premises, however, violating clause 6 of the agreement the defendant has changed the user of the suit premises and was using the suit premises for commercial purpose. That as per the agreement the suit premises was let out for residential purposes but due to change of user from

residential to commercial, Municipality had changed the ratable value of the suit property and as a result therefore, heavy additional taxes have been levied on the plaintiff. Further it was submitted hat defendant had acquired suitable alternative accommodation on 4th floor, Samadhan Building, Sutar Chawl, Mumbai-2 and on such and other ground the suit came to be filed when the defendant did not vacate the suit premises.

. The defendant contested the suit, inter alia, denying the allegations made by the plaintiffs and sought dismissal of the suit with costs.

4. The learned trial court after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiff had succeeded in establishing that the defendant had made permanent alterations and additions in the suit premises without plaintiff’s written permission. It was held that the plaintiff had succeeded in establishing that the defendant had changed the use of the suit premises and had committed the breach of terms of tenancy agreement. It was further held that the defendant had acquired suitable alternative accommodation and on those grounds the suit came to be

decreed.

. The appeal was carried to the district court, who after hearing both the parties came to the conclusion that the findings and reasoning recorded by the trial court were legal and proper and therefore dismissed the appeal. Hence the present petition.

5. At the outset it may be noted that the learned counsel for the petitioner vehemently urged that despite the contents of the suit agreement, the agreement was not proved in strict sense of the term, and therefore conditions mentioned therein were not binding upon the defendant-tenant especially in view of the fact that from the day of the tenancy the suit premises was used commercially by him for his business. In support of this argument, my attention was invited to the document of rent receipt of the year 1986 and electrical bills. Rent receipt of the year 1986 showed that the word "non residential repair-cess" was noted on the said receipt. However, that was the isolated document, which could be said to be indicative of non residential use. However, it is pertinent to note that the defendant has failed to establish that either his shop licence or electrical meter

were for commercial use with consent of the landlord and therefore, it cannot lie in the mouth of the defendant that it was agreed between the parties that the use of the suit premises was only for the commercial purpose. Moreover, it is to be noted that the plaintiff appears to have proved the document of suit agreement in the course of his testimony whereas the defendant has not entered into witness box to rebut such evidence in order to show that the conditions contained in the agreement were not to be acted upon or that he was not aware thereof. The power of attorney of the defendant has entered into witness box, but evidently he has no personal knowledge of the material facts involved in the dispute, especial pertaining to the conditions embodied in the agreement. As is now settled law in the case of **Janki Vashdeo Bhojwani and Anr. vs. Indusind Bank Ltd. and Ors. reported in AIR 2005 sc 439,** wherein the Apex Court has clearly held that the evidence of power of attorney, who has no personal knowledge of facts in dispute would be of no consequence in order to support the particular parties cause in the court of law.

6. Be as it may, the fact remains that the concurrent findings recorded by both the courts below appear to be based on legal and valid evidence and the findings

recorded and reasoning adopted by both the courts below appear to be legal and proper and therefore, it would brook no interference as contemplated by Article 227 of the Constitution of India.

7. In the circumstances, the petition appears to be devoid of any merits and it stands dismissed with no order as to costs.

8. At this stage the learned counsel for the petitioner sought Stay of execution of the decree. In view of the facts and circumstances, it is directed that the decree for possession shall not be executed for a period of eight weeks from the date of this order.